



## Proposed Regulation Agency Background Document

<b>Agency name</b>	Board for Contractors
<b>Virginia Administrative Code (VAC) citation</b>	18 VAC 50 -30
<b>Regulation title</b>	Board for Contractors Tradesman Regulations <u>Individual License &amp; Certification Regulations</u>
<b>Action title</b>	Amending Regulations to add Certified Elevator Mechanics
<b>Document preparation date</b>	November 30, 2004

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.*

Chapter 188 of the Acts of the General Assembly (2004) added Article 4 to Chapter 11 of Title 54.1 of the Code of Virginia. This amendment to the statutes introduces “Certified Elevator Mechanics” to the regulatory authority of the Board for Contractors. In order to facilitate this introduction, the current regulations must be amended to define entry requirements, list fees and set certificate maintenance procedures for this new program. In many instances, specifically those sections that provide general information about all programs incorporated into these regulations, the amendment is merely the addition of elevator mechanics to the fold. In other areas, however, new ground was developed to facilitate the requirements, unique to this program, that were set in the statutes, including the requirement that certificate holders complete continuing education courses as a prerequisite of renewal.

### Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

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As provided in Chapter 188 of the Acts of the General Assembly, Section 54.1-1142(A) of the Code of Virginia provides the authority for the Board to issue certificates to practice as an elevator mechanic in the Commonwealth.

As provided in Chapter 188 of the Acts of the General Assembly, Section 54.1-1143(A) of the Code of Virginia requires the Board establish in the regulations requirements for the completion of continuing education as a prerequisite to renewal as a “Certified Elevator Mechanic.”

The content of the regulations is up to the discretion of the Board, but shall not be in conflict with the purposes of the statutory authority.

### Purpose

*Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal and the problems the proposal is intended to solve.*

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The Board for Contractors (the Board) seeks to amend its current Tradesman Regulations to add Certified Elevator Mechanics to the regulations as required by Chapter 188 of the Acts of the General Assembly approved March 19, 2004.

### Substance

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the “Detail of changes” section.)*

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Chapter 188 of the Acts of the General Assembly added Article 4 to Chapter 11 of Title 54.1 of the Code of Virginia. This amendment to the statutes introduces “Certified Elevator Mechanics” to the regulatory authority of the Board for Contractors. These regulations will define entry requirements, list fees and set certificate maintenance procedures for this new program. Since this is a new program all changes made to the existing regulations are substantive.

Many of these changes are “administrative” in nature and merely add the term “elevator mechanic” to existing language that includes all of the individual regulatory programs referenced in these regulations. This would include definitions and references to administrative actions, such as renewal and reinstatement, that are common to the other programs.

Other changes outline entry and testing requirements for those individuals applying for certification as elevator mechanics, including formal education hours, acceptable levels of experience and apprenticeship information. Along with the entry and testing requirements would be fees applicable for this new certification program, which are incorporated into the sections that contain fees for all other programs incorporated in these regulations.

Since continuing education is a statutory requirement of this program, provisions are added to the regulations regarding those requirements in the sections involving renewal and vocation training/continuing education. This included references to programs developed by nationally affiliated providers as well as approval requirements for individuals not affiliated with a national program.

## Issues

*Please identify the issues associated with the proposed regulatory action, including:*

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

*If the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.*

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1) In amending these regulations the Board for Contractors is complying with the provisions of legislation signed into law this year establishing a program to certify elevator mechanics. After studying data relative to accident rates, inspection reports and the licensing/education requirements in other states, the General Assembly determined a need for this level of regulation in order to protect the public. The primary advantage of the program is to ensure that work done on elevators and escalators is performed by individuals who have received sufficient training and demonstrated enough experience to reasonably assume competency in the repairs they will be completing. At the same time, the legislation takes the step to require ongoing education of those individuals in an effort to ensure that safety issues that arise as a result of technological advances, are passed on to those who are responsible for repairing the devices.

The only possible disadvantage to the program will involve the availability of continuing education classes in those areas geographically located far from population centers, but that still have devices that will require repairs by a certified elevator mechanic. It is likely that there will be difficulties that occur during the first renewal cycle, but should become less of a disadvantage as more training programs are approved by the Board and the physical location of the regulant population is identified.

2) Although this program is predicted to have a relatively small impact on the total regulant populaton of the Board for Contractors, the development and implementation of data base software that will track continuing education requirements, will be unfamiliar territory for the Board and its licensing staff. While certainly not an insurmountable obstacle, it will still require significant training of staff and modifications to existig software.

3) This development of this program, through the legislative process, was supported by many of the localities that will be the most affected by its implementation, those located in areas with a large amount of development that includes elevators and escalators. Testimony provided at legislative committee meetings indicated that the majority of those individuals currently employed as elevator mechanics, already belong to organizations that have, in place, substantive training programs (including continuing education), and would welcome a requirement that ALL individuals performing this type of work, meet those same standards of training and education.

**Economic impact**

*Please identify the anticipated economic impact of the proposed regulation.*

**Fiscal Impact of Proposed Regulation**

**Summary:**

All costs incurred in support of board activities and regulatory operations are paid by the department and funded through fees paid by applicants and licensees. All boards within the Department of Professional and Occupational Regulation must operate within the Code provisions of the Callahan Act (54.1-113), and the general provisions of 54.1-201. Each regulatory program's revenues must be adequate to support both its direct costs and a proportional share of agency operating costs. The department allocates costs to its regulatory programs based on consistent, equitable, and cost-effective methodologies.

**Fiscal Impact:**

	FY 2005	FY 2006	FY2007	FY2008
Fund / fund detail	NGF (0900)	NGF (0900)	NGF (0900)	NGF (0900)
Program/Subprogram	560 44	560 44	560 44	560 44

Impact of Regulatory Changes:				
One-Time Costs	0	0	0	0
Ongoing Costs	0	0	0	0
Total Fiscal Impact	0	0	0	0
FTE	0.00	0.00	0.00	0.00

**Description of Costs:**

One-Time: There are no one-time costs associated with the proposed regulations.

Ongoing: There are no ongoing costs associated with the proposed regulations.

**Cost to Localities:**

**Description of Individuals, Businesses, or Other Entities Impacted:**

**Estimated Number of Regulants:** Approximately 300-400 new regulants are expected as a result of these regulations.

**Projected Cost to Regulants:** No change is expected in the cost to individuals, businesses, or other regulants as a result of these regulations.

### Financial Status and Projections Board for Contractors

Number of Regulants 92,331

#### Current Regulations - Assumes Proposed Fees are Effective

	<u>2000-2002</u>	<u>2002-2004</u>	<u>2004-2006</u>	<u>2006-2008</u>	<u>2008-2010</u>
<b>Beginning Cash Balance</b>	1,096,719	-930,483	136,805	1,622,157	2,430,806
<b>Revenue</b>	5,557,370	9,563,649	11,665,970	11,899,289	12,137,275
<b>Expenditures:</b>					
<b>Board Expenditures</b>	441,933	425,653	510,031	555,622	618,963
<b>Board Administration</b>	1,068,549	1,185,474	1,420,474	1,547,447	1,723,856
<b>Examinations</b>	40,154	49,150	58,893	64,157	71,471
<b>Enforcement</b>	3,406,236	3,914,332	4,690,281	5,109,534	5,692,021
<b>Legal Services</b>	163,566	64,780	77,622	84,560	94,200
<b>Information Systems</b>	864,603	698,334	836,767	911,563	1,015,482
<b>Facilities/ Support Services</b>	758,783	963,980	1,155,072	1,258,322	1,401,770
<b>Agency Administration</b>	818,107	945,619	1,133,072	1,234,354	1,375,071
<b>Transfers/Other</b>	22,641	249,039	298,407	325,081	362,140

<b>Total Expenditures</b>	7,584,572	8,496,361	10,180,618	11,090,640	12,354,973
<b>Cash Balance</b>	<b>-930,483</b>	<b>136,805</b>	<b>1,622,157</b>	<b>2,430,806</b>	<b>2,213,108</b>
<b>Callahan Percentage</b>	<b>-12.3%</b>	<b>1.6%</b>	<b>15.9%</b>	<b>21.9%</b>	<b>17.9%</b>

NOTES:

The methodology for allocating legal services provided by the Attorney General's Office was changed in the 2002-04 biennium.

The Board experienced a substantial increase in the volume of licensees during the 2002-04 biennium, which increases the projections for both revenues and expenditures for future biennia. There is no clear indication whether this trend of increasing volumes will continue.

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The number of new regulants is expected to be approximately 300-400, and will not result in additional costs to the Board.

**Alternatives**

*Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.*

Since this is a new program, mandated by law, no other alternatives exist for amending the regulations in order to bring them into compliance the Code of Virginia. At this time, no alternative has been established for amending current definitions or the establishment of a continuing education program, however, it is likely that many alternatives will be presented during the public comment periods.

**Public comment**

*Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.*

No comment was received during the public comment period following the publication of the NOIRA.

**Family impact**

*Please assess the impact of the proposed regulatory action on the institution of the family and family stability.*

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These amendments will have no impact on the institution of the family or family stability.

**Detail of changes**

*Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.*

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

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For changes to existing regulations, use this chart:

<b>Current section number</b>	<b>Proposed new section number, if applicable</b>	<b>Current requirement</b>	<b>Proposed change and rationale</b>
18 VAC 50-30-10		Definition of "regulant"	Adds "elevator mechanic" to definition
18 VAC 50-30-40		Evidence of ability and proficiency for other programs incorporated into these regulations.	<p>Paragraph E adds requirements for certification as an elevator mechanic, including three years of experience and 144 hour of formal vocational training.</p> <p>These requirements are within the guidelines of other states that regulate elevator mechanics where vocational experience can be used in lieu of completing an apprenticeship program. The law, as enacted, requires a minimum of three years of practical experience. The proposed regulations require three years of practical experience in the service/repair of elevators, escalators or related conveyances. Of the ten other states with similar programs all but three, require three years of practical experience, with Florida (4 years) exceeding the average, Vermont (4 years with a licensed Vermont elevator mechanic) and Washington (no experience required) below the average. Other states with elevator programs dissimilar to Virginia's have a wide variance of experience requirements. The three years is also conducive to various apprenticeship programs that, on average, require the same amount of time. With</p>

		<p>those facts in mind, the Board agreed that the three year minimum was sufficient and that to exceed that amount would be an unnecessary burden to the regulants.</p> <p>In addition to the experience requirements the Board has proposed that an applicant complete 144 hours of formal vocational training. Although, few states have an educational <i>requirement</i> outside of optional apprenticeship programs (California and Connecticut), the requirement of formal vocational training was mandated in the new law, the amount of training was not. Research was inconclusive as the requirement for formal vocational training is not endorsed equally in other states. The Board has historically required formal vocational training for all individual licensing and certification programs in order to ensure that those individuals who chose not to enter a profession through an approved apprenticeship program are provided equivalent training to those who do. This requirement provides equality in the education presented to both apprentices and non-apprentices increasing the level of protection afforded to consumers while placing no additional burden on applicants. The Board felt, however, that elevator mechanics should not be burdened with the same educational requirements of tradesman, such as plumbers and electricians, since the scope of practice was much smaller and the availability of courses related to the subject matter was more restricted. Discussions with industry representatives, union sponsors and from providers of course curriculums approved by the National Elevator Industry education Program (NEIEP) and other interested parties at meetings held by the Virginia Housing Study Commission and other legislative committees indicates that the 144 hours is a reasonable amount of training that will ensure exposure to adequate information to safely perform the job while not being an unnecessary burden to the regulants.</p> <p>This section of the regulations also provides two other ways of obtaining Board certification. The first involves three years of practical experience and completion of a training program determined to be equivalent of the requirements established by the Board. This would allow individuals regulated in another jurisdiction (or even already practicing in Virginia) to obtain licensure without having to “go back to school” and take the Virginia test. They would only be required to document the three years of experience at which point the Board would look at the provisions of the completed training program and, if deemed equivalent, would be deemed as having met the criteria for certification.</p>
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			<p>The last provision of this section involves certification through successful completion of an elevator mechanic apprenticeship program that is approved on the Virginia or Federal levels. This section is consistent with the provisions of those states that recognize apprenticeship programs as a means of occupational training. Seven other states have similar language in their statutes, regulations or policies.</p>
18 VAC 50-30-90		Fees	<p>Establishes fees for the certification of elevator mechanics. These fees are consistent with those of the other programs incorporated under these regulations. It is anticipated that the number of individuals applying for this new certification program will total approximately 400 and will have an insignificant affect on the Board's revenue. Additionally, the Callahan Act requires that DPOR review each board's expenditures at the close every biennium, and to adjust fees if necessary.</p>
18 VAC 50-30-110		A third request for a duplicate card results in a report sent to the Enforcement Section.	<p>The language was amended to indicate that requests for a third and subsequent duplicate card <i>may</i> be referred for possible disciplinary action. This sentence was also moved to the end of the section.</p> <p>The language was changed to be optional based on the fact that the majority of circumstances do not warrant that an investigation be conducted to determine if duplicate cards are being obtained fraudulently. Most requests are benign and merely the result of cards being washed or otherwise damaged or destroyed. Current language demands that <i>ALL</i> instances result in investigation, (even in instances where the regulant brought the damaged card to the Board) which could result in a bottleneck of complaints that were, for the most part, unwarranted.</p>
18 VAC 50-30-120		Renewal provisions	<p>This amendment adds a section to the general renewal portion of the regulations that is specific to elevator mechanics. This was necessary in order to add the provisions of continuing education as required by the initiating legislation.</p> <p>The amount of continuing education is presented in the statute and is consistant with those states with similar programs that require continuing education.</p> <p>The section also lists the renewal fee for elevator mechanics, which is equivalent to the renewal fee for all other programs incorporated into these regulations. It is anticipated that the number of individuals applying for this new certification program will total approximately 400 and will have an insignificant affect on the Board's revenue. Additionally, the Callahan Act requires that DPOR</p>

			review each board's expenditures at the close every biennium, and to adjust fees if necessary.
18 VAC 50-30- 130		Reinstatement provisions	<p>This section lists the reinstatement fee for elevator mechanics, which is equivalent to the reinstatement fee for all other programs incorporated into these regulations. It is anticipated that the number of individuals applying for this new certification program will total approximately 400 and will have an insignificant affect on the Board's revenue. Additionally, the Callahan Act requires that DPOR review each board's expenditures at the close every biennium, and to adjust fees if necessary.</p> <p>Additional language is made to clarify other portions of this section to ensure that the section is relevant to elevator mechanics. Other clarification language is added to separate liquefied petroleum gas fitters and natural gas fitter providers from tradesman, in order to make the provisions technically correct.</p>
18 VAC 50-30- 185		Revocation provisions	This amendment adds elevator mechanics to the section that already addresses other programs incorporated into these regulations.
18 VAC 50-30- 190		Prohibited Acts	The amendement adds elevator mechanics to the applicable provisions of the prohibited acts where other programs incorporated into these regulations are mentioned.
18 VAC 50-30- 200		Vocational Education	<p>This amendment adds elevator mechanics to the section of the regulations addressing vocational training. This new section requires that courses be approved by the Board, except those approved by the National Elevator Industry Education Program (NEIEP) which shall be deemed to have already met approval criteria.</p> <p>While there are several industry and union affiliated organizations that provide training programs, the independent, NEIEP appears to be the standard accepted throughout the country. Six states (AL, CA, MD, TX, WA &amp; VT) specifically mention NEIEP in their statutes or regulations as an approved education provider and all of the states surveyed recognize the NEIEP program for either pre-licensure education or continuing education.</p>

Enter any other statement here